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DEC 05 2007

OFFICE OF PETITIONS

In re Application of :
Lee, et al. : DECISION REFUSING STATUS
Application No. 10/645,716 : UNDER 37 CFR 1.47(a)
Filed: August 7, 2003 :
Attorney Docket No. N/A :
For: METHOD FOR ELIMINATING :
BLOOMING STREAK OF ACQUIRED :
IMAGE :

This is in response to the petition under 37 CFR 1.47(a), filed August 7, 2003.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventors cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known addresses of the non-signing inventors. Applicant lacks item (1) set forth above.

As to item (1), the applicable statute (35 U.S.C. § 116) requires that a "diligent effort" have been expended in attempting to find or reach the non-signing inventor. See MPEP 409.03(a). The showing currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate non-signing inventors Seong, Lee, and Kim, such that the declaration can be accepted under 37 CFR 1.47(a). Where inability to find or locate a named inventor(s) is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor.

Petitioner has not demonstrated that all efforts were expended in trying to locate the non-signing inventors. The petition states, " Mr. Kujin had made diligent effort (phone calls, and letters) to contact the other three joint inventors: Mr. Poong Hyun Seong, Mr. Seung Jun Lee, and Mr. Jong Hyun Kim. However, they all cannot be reached while they have been away from home and gone for summer vacation at this time period."

Per MPEP 409.03(d): PROOF OF UNAVAILABILITY OR REFUSAL (I): The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47(a).

If the non-signing inventors' whereabouts is really unknown, petitioner must expend more effort in attempting to reach them. Petitioner should conduct a search of the regional or national registry(s) for the inventors residing abroad. The results of such search should be made in any future petition for reconsideration. *See* MPEP 409.03(d). Additionally, petitioner should state whether he has access to the inventors' personnel records and, if so, what does inspection of the records reveal as to current addresses, forwarding addresses, or an address of the nearest living relative? What does inspection of phone directories for those address locations reveal? Further, the petition fails to clearly indicate that the patent application and a request that a signed declaration be returned was ever mailed to each inventor's last known address. Petitioner should mail correspondence to the inventors' last known addresses, return receipt and/or forwarding address requested. If forwarding addresses are provided, petitioner should then mail a complete copy of the application papers (specification, claims, drawings, oath, etc.) to the new addresses, return receipt requested, along with a cover letter of instructions which includes a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. If the papers are returned and all other attempts to locate or reach the inventors, e.g., through personnel records, co-workers, E-mail, the Internet or the telephone, etc., continue to fail, then applicant will have established that the inventors cannot be reached after diligent effort or has refused to join in the application.

It is noted that the petition is signed by a patent agent, not Mr. Kujini Lee, who made the initial efforts to locate the non-signing inventors. **A statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein and should be accompanied by documentary evidence in support of the statement of facts.** It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

If the application papers and declaration are successfully mailed to the non-signing inventors:

Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration by the party to whom the refusal was made. Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the rule 47 applicant that an omitted inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or

declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

Whenever an omitted inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

Telephone inquiries should be directed to the undersigned at (571) 272-3230.


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